

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 12, 2005

IN RE:

**PETITION FOR EXPEDITED REVIEW OF THE
POOLING ADMINISTRATOR'S DENIAL OF A
REQUEST FOR A GROWTH BLOCK FOR THE
SMITHVILLE RATE CENTER FOR A LOCATION
ROUTING NUMBER**

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**DOCKET NO.
05-00098**

**ORDER APPROVING PETITION FOR
EXPEDITED REVIEW OF GROWTH BLOCK DENIAL
AND REVERSING GROWTH BLOCK DENIAL**

This matter came before Chairman Pat Miller, Director Deborah Taylor Tate, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on May 16, 2005 for consideration of the *Petition for Review of the Pooling Administrator's Denial of a Request for a Growth Block for a Location Routing Number and, in the Alternative, Request for Waiver of the FCC's Rules and Industry Numbering Committee Guidelines* ("Petition for Review") filed by Advantage Cellular Systems, Inc. ("Advantage") on April 8, 2005.

BACKGROUND

In March of 2000 the Federal Communications Commission ("FCC"), recognizing "the near-crisis" caused by the exhaustion of telephone numbers in certain expanding geographic areas, initiated a policy designed "to slow down the rate at which central office codes (or NXXs)

in those areas are assigned to carriers.”¹ Among other things, the FCC adopted a mandatory utilization data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, and a utilization threshold framework to increase carrier accountability and provide incentives to use numbers efficiently.²

On June 18, 2001, the FCC designated NeuStar, Inc. (“NeuStar”) as the national thousands-block number Pooling Administrator (“PA”).³ NeuStar, which also serves as the North American Numbering Pool Administrator (“NANPA”), currently administers thousands-block number pools by assigning, managing, forecasting, reporting and processing data that will allow service providers in areas designated for thousands-block number pooling to receive telephone numbers in blocks of 1,000. On March 14, 2002, thousands-block number pooling was implemented in the Nashville Metropolitan Statistical Area, which is in the 615 Numbering Plan Area (“NPA”). Since then, telecommunications service providers participating in number pooling in that area have been required to submit their requests for any numbering resources to the PA.

On July 24, 2004, Advantage purchased a Global Standard for Mobile communications (“GSM”) switch for its Smithville Rate Center. In an attempt to become Local Number Portability (“LNP”) compliant, which is required of commercial radio service carriers by the FCC,⁴ Advantage needed a Local Routing Number (“LRN”) for the GSM switch. On March 18, 2005, Advantage submitted a Central Office Code (NXX) Assignment Request to the PA to be assigned an NXX code for the purpose of assigning the one ten-digit number as a LRN to its new

¹ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200 (*Report and Order and Further Notice of Proposed Rule Making*) 15 FCC Rcd 7574, 2000 WL 339808, ¶¶ 2, 183, 191 (March 31, 2000) (“*First Report and Order*”), see also 47 U.S.C. § 251(e)(1) (directing the FCC to “create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis”).

² See *First Report and Order*, ¶¶ 40-41, 84, 97-98.

³ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200 (*Third Report and Order and Second Order on Reconsideration*) 17 FCC Rcd 252, 2001 WL 1658101, ¶ 11 (Dec. 28, 2001) (“*Third Report and Order*”), see also 47 C.F.R. § 52.15(a).

⁴ 47 C.F.R. § 52.31.

switch. The PA, citing Advantage's failure to meet its NXX Assignment Guidelines, denied Advantage's request on March 23, 2005. The guidelines require that a rate center must have a 75% utilization rate and that its estimated exhaust date not exceed six months. Advantage could not meet these guidelines. While the Smithville Rate Center has a 75.8% utilization rate, the projected exhaust date is 19.7 months, therefore the PA properly denied Advantage's request.

PETITION FOR REVIEW

On April 8, 2005, Advantage filed its *Petition for Review* with the Authority. In the *Petition for Review* Advantage states that it has purchased the new GSM switch, which will help Advantage to provide its customers with a broader array of services including Internet, multi-media and data services. In order to make the switch LNP compliant, Advantage must receive the requested NPA-NXX to establish the new LRN. Thus, Advantage will be unable to utilize its newly purchased switch if it does not receive the NPA-NXX. As a result, Advantage requests that the Authority reverse the Pooling Administrator's denial of its application and order the release of numbering resources, or, in the alternative, that the Authority waive the FCC's utilization requirements and remand to the PA with instructions to grant Advantage's request for a growth block for use as an LRN. Advantage also states that it exhausted all other remedies prior to filing with the TRA and that the requested action by the Authority will not be inconsistent with the public interest because Advantage will donate all of the unused numbers back to the PA once it establishes a LRN.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Review by the TRA of the Pooling Administrator's denial of Advantage's application is authorized by the FCC.⁵ According to the FCC:

⁵ *Third Report and Order*, ¶ 61, see also 47 C.F.R. § 54.15(g)(3)(iv)

We agree with the commenting parties that a safety valve mechanism should be established, and we delegate authority to state commissions to hear claims that a safety valve should be applied when the NANPA or Pooling Administrator denies a specific request for numbering resources. State commissions should only apply a safety valve mechanism as a last resort and, to the extent possible, use it as a stop gap measure to enable carriers in need of additional numbering resources to continue to serve their customers. We adopt one specific safety valve to address the numbering resource requirements of carriers experiencing rapid growth in a given rate area. We also clarify that states may grant requests by carriers that receive a specific customer request for numbering resources that exceeds their available inventory. Finally, we give states some flexibility to direct the NANPA or Pooling Administrator to assign additional numbering resources to carriers that have demonstrated a verifiable need for additional numbering resources outside of these specifically enumerated instances.⁶

State commissions conducting this review must act consistently with the FCC's policy of facilitating fair and efficient numbering administration in the United States and ensuring that numbering resources are available to all telecommunications service providers on a fair and equitable basis.⁷ At a regularly scheduled Authority Conference held on May 16, 2005, the voting panel assigned to this Docket considered Advantage's *Petition for Review*. After consideration of the record, the public interest and the Authority's responsibility to foster competition in the telecommunications industry,⁸ the panel voted unanimously to reverse the Pooling Administrator's denial of Advantage's request for additional numbering resources, specifically for the assignment of one thousand-block to Advantage for the Smithville Rate Center.

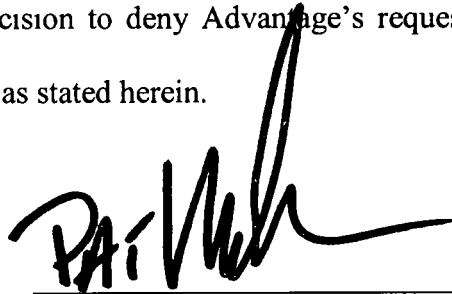
⁶ *Third Report and Order*, ¶ 61

⁷ See, e.g., *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200 (*Order*) 16 FCC Rcd 15,842, 2001 WL 964979, ¶ 8 (Aug. 24, 2001) ("[T]he state commissions, to the extent that they act under the authority delegated herein, must ensure that numbers are made available on an equitable basis, that numbering resources are made available on an efficient and timely basis, that whatever policies the state commissions institute with regard to numbering administration not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers, and that the state commissions not unduly favor one telecommunications technology over another"), see *FCC Announces GSA Approval of North American Numbering Council Through October 4, 2003*, CC Docket No. 92-237 (*Public Notice*) 16 F.C.R. 18,502, 2001 WL 1222428 (Oct. 15, 2001)

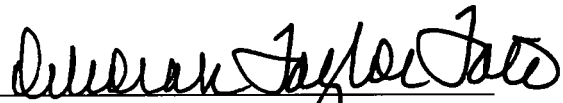
⁸ See Tenn. Code Ann. § 65-4-123 (2004)

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Review of the Pooling Administrator's Denial of a Request for a Growth Block for a Location Routing Number and, in the Alternative, Request for Waiver of the FCC's Rules and Industry Numbering Committee Guidelines* filed by Advantage Telecommunications, Inc. is granted.
2. The Pooling Administrator's decision to deny Advantage's request for a NPA-NXX for the Smithville Rate Center is reversed as stated herein.



Pat Miller, Chairman



Deborah Taylor Tate, Director



Ron Jones, Director